
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

GREGORIO CABALLERO,

Plaintiff,

versus

TDCJ CORRECTIONAL OFFICERS,

Defendants.

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CIVIL ACTION NO. 1:15-CV-364

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Gregorio Caballero, an inmate confined at the Stiles Unit in Beaumont, Texas, proceeding *pro se*, brought this lawsuit pursuant to 42 U.S.C. § 1983 against TDCJ Correctional Officers.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed without prejudice for failing to exhaust available administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed a motion for extension of time to exhaust his administrative remedies. Liberally interpreted, plaintiff's pleading is construed as objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff requests an extension of time to exhaust his administrative remedies and to be transferred from the Stiles Unit until he has exhausted his administrative remedies because the living conditions at the Stiles Unit are dangerous. However, administrative remedies must be exhausted prior to filing the complaint whether the claims involve general circumstances or particular

episodes. *See Porter v. Nussle*, 534 U.S. 516, 523-32 (2002); *Wood v. Hirsch*, 461 F. App'x 365, 365 (5th Cir. 2011) (affirming district court's refusal to stay proceedings to enable plaintiff to exhaust and rejecting claim that "emergency conditions" justified excusing the exhaustion requirements). Since plaintiff did not exhaust his administrative remedies prior to filing this action, the above-styled action should be dismissed without prejudice to plaintiff's ability to file his claims once he has exhausted the available administrative remedies.

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 30th day of November, 2015.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE